

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN J. YAKE and DEPARTMENT OF THE NAVY,
NAVAL HOSPITAL, Bremerton, Wash.

*Docket No. 95-2479; Submitted on the Record;
Issued June 24, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's case for reconsideration of the merits of her claim pursuant to section 8128(a) of the Federal Employees' Compensation Act constituted an abuse of discretion.¹

On July 22, 1992 appellant, then a 39-year-old dietitian, filed an occupational disease claim, alleging that she developed stress after being asked to marry, propositioned by and called continuously by a psychiatric patient at the hospital where she worked. By decision dated March 4, 1993, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that her medical condition was causally related to compensable factors of her federal employment. By decision dated March 23, 1994, an Office hearing representative affirmed the Office's March 4, 1993 decision.

By decision dated April 5, 1995, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and irrelevant and therefore insufficient to warrant review of the prior decisions.²

The Board's jurisdiction is limited to final decisions issued by the Office one year prior to the filing of an appeal with the Board.³ As appellant's appeal was docketed on July 5, 1995, the Board only has jurisdiction to review the Office's April 5, 1995 decision.

The Board has fully reviewed the case record and finds that the Office properly denied appellant's request for reconsideration.

¹ 5 U.S.C. § 8128(a).

² Appellant did not file a petition for reconsideration until March 20, 1995.

³ 20 C.F.R. § 501.3.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁴ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁵ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁶

Appellant filed an occupational disease claim for an emotional condition in which she alleged numerous causative factors for her condition which she believed were causally related to the performance of duty. In its March 1993 decision, the Office found that appellant had not identified any compensable factors of employment. In the decision by the Office hearing representative, the Office found that there were two compensable factors of employment cited by appellant, namely, that she was erroneously issued a notice of counseling on June 17, 1992 for an unexcused absence from work and that Ms. Colleen Dougan, appellant's supervisor, improperly advised appellant on July 15, 1992 that she had to use the pay phone to call the union rather than her office phone. However, the Office hearing representative further found that there was no medical evidence to establish a causal nexus between appellant's emotional condition and the compensable factors of employment.

With her request for reconsideration, appellant submitted voluminous documentation she believed was supportive of her claim for an emotional condition including the following: copies of time card and leave slips dated between June 27, 1992 and September 4, 1993; a copy of a report by Lisa Batt, a Judge Advocacy Officer and other documents developed with her investigation into appellant's sexual harassment claim; the employing establishment's investigating report of Mr. Mason's assault of another patient on January 27, 1992; a medical report by Dr. Nicholas Davenport dated August 13, 1992 in which he stated that appellant was anxious due to a patient's sexual harassment of her; reports dated between March 24, 1993 and October 24, 1994 diagnosing work-related stress in relation to incidents that occurred subsequent to the occupational disease claim at issue herein; letters from appellant to various officials alleging additional incidents from November 1993 onward which she believed caused stress; affidavits from coworkers that corroborated these later incidents; a letter from a Mormon church official clarifying what steps the church took to protect appellant from Mr. Mason, who is also a member of the Mormon faith; a report and office notes by Janet Spencer, M.A., who counseled appellant in relation to her sexual harassment complaint; copies of all of the Equal Employment Opportunity (EEO) complaints for retaliation filed by appellant both before and after she filed her occupational disease claim; letters to EEOC officials; a transcript of the EEO hearing in her claim for sexual and religious discrimination and reprisal dated September 29, 1994; a pre-

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

⁶ *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

hearing memorandum in her EEO complaint; a report of retaliation and appellant's allegation of perjury by various employing establishment officials and coworkers at the hearing; and an administrative law judge's bench decision in appellant's EEO claim.

None of the evidence submitted by appellant on reconsideration is sufficient to establish that review of the prior Office decisions was warranted inasmuch as the evidence submitted is either repetitious or irrelevant to the instant occupational disease claim. A significant portion of the evidence submitted by appellant on reconsideration addresses alleged employment incidents that occurred subsequent to the period of exposure at issue in her occupational disease claim. While these incidents may be relevant should appellant elect to file another occupational disease claim for work-related stress, this evidence is not relevant to the issue in this case of whether appellant sustained an emotional condition on or about July 1992 causally related to factors of her federal employment.⁷ The evidence submitted by appellant in relation to the EEO complaint that has been adjudicated does not support her position on reconsideration. Rather, it bolsters the Office's decision in which it found her sexual and religious discrimination charges and complaint of reprisal not to be compensable as the conduct alleged arose out of personal contact with Mr. Mason rather than in the performance of duty and the conduct by the employing establishment and her supervisor was not erroneous or abusive given the totality of the evidence. Although appellant continues to allege that she was subject to reprisal at that time and that the employing establishment officials and her supervisors committed perjury at her EEO hearing, there is no evidence to substantiate these allegations. The evidence submitted by appellant which addresses her other EEO complaints, conduct by her supervisor and coworkers which predates July 1992 and the letters of counseling is repetitive and is therefore insufficient to establish a basis for review.⁸ Finally, none of the medical evidence submitted by appellant which covers the relevant period of exposure addresses the compensable factors of employment. Consequently, none of the evidence submitted by appellant is sufficient to warrant merit review of the Office's decisions.

⁷ *Id.*

⁸ *Powell, supra* note 5; *Butler, supra* note 5; *Martin, supra* note 5.

The decision of the Office of Workers' Compensation Programs dated April 5, 1995 is hereby affirmed.

Dated, Washington, D.C.
June 24, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member